



Agenda

1

Google Has Monopoly Power In The U.S. General Search Services Market

2

Google's Search Distribution Contracts Have Anticompetitive Effects

3

Google Failed To Prove Procompetitive Benefits Outweighing The Anticompetitive Effects

4

Summation

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“[I]f a plaintiff successfully establishes a *prima facie* case under § 2 by demonstrating anticompetitive effect, then the monopolist may proffer a ‘procompetitive justification’ for its conduct.”

United States v. Microsoft Corp., 253 F.3d 34, 59 (D.C. Cir. 2001)



Google's Burden

“Microsoft failed to meet its burden of showing that its conduct serves a purpose other than protecting its operating system monopoly.”

United States v. Microsoft Corp.,
253 F.3d 34, 59, 67 (D.C. Cir. 2001)

“This burden-shifting has evolved based on which party has access to the various categories of evidence and information, with any evidence of pro-competitive justifications likely to be under the defendant’s control.”

Viamedia, Inc. v. Comcast Corp.,
951 F.3d 429, 464 (7th Cir. 2020)

“The Government, having demonstrated harm to competition, the burden shifts to Dentsply to show that [its exclusionary contractual provision] promotes a sufficiently pro-competitive objective.”

United States v. Dentsply Int’l, Inc.,
399 F.3d 181, 196 (3d Cir. 2005)

“[T]he ‘procompetitive benefits’ argument is the centerpiece of Meta’s affirmative defense to the FTC’s claims. . . . [B]ecause it is an affirmative defense, Meta will bear the burden of proof on the issue.”

FTC v. Meta Platforms, Inc.,
2023 WL 3092651, at *1 (D.D.C. Apr. 26, 2023)

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3

Google Failed To Prove Procompetitive Benefits Outweighing The Anticompetitive Effects

A. Competition For The Contract

B. Passthrough

Competition For The Contract

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Belongs In Justifications

Case 1:20-cv-03010-APM Document 728 Filed 10/06/23 Page 1 of 60

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 20-cv-3010 (APM)

STATE OF COLORADO, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 20-cv-3715 (APM)

MEMORANDUM OPINION

I. INTRODUCTION

Google LLC operates the largest Internet general search engine in the United States. Its brand name has become so ubiquitous that dictionaries recognize it as a verb.¹

A Google search can be performed in a variety of ways—through (1) web browsers, like Apple's Safari, Microsoft's Edge, Mozilla's Firefox, and Google's Chrome; (2) search widgets

¹ See, e.g., Google, DICTIONARY.COM, <https://www.dictionary.com/browse/google> (last visited July 31, 2023) ("to search the internet for information about (a person, topic, etc.)"); Google, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/google_v2?tab=meaning_and_use#10568538 (last visited July 31, 2023) ("To use the Google search engine to find information on the internet."); Google, MERRIAM-WEBSTER'S DICTIONARY, <https://www.merriam-webster.com/dictionary/google> (last visited July 31, 2023) ("to use the Google search engine to obtain information about (someone or something) on the World Wide Web.").

“The court thinks that Google’s **‘competition for the contract’ defense** cannot be resolved on summary judgment at the *prima facie* stage and is **better left for the procompetitive prong** of the *Microsoft* analysis. *See Microsoft*, 253 F.3d at 59 (describing a procompetitive justification as ‘a nonpretextual claim that [the monopolist’s] conduct is indeed a form of competition on the merits because it involves, for example, . . . *enhanced consumer appeal*’) (emphasis added).”

United States v. Google LLC, No. 20-CV-3010 (APM), 2023 WL 4999901, at *17 (D.D.C. Aug. 4, 2023) (emphasis added)

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Competition For The Contract: Apple and Mozilla

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Broken Promise

“The Court will hear testimony and receive evidence of how Apple and Mozilla conducted these competitions. The Court will hear from **Eddy Cue**, a longtime senior executive at Apple who had responsibility for negotiating agreements with Google.

The Court will also hear from **John Giannandrea**, another senior Apple executive. And, last, the Court will review videotaped deposition testimony from **Mitchell Baker**, Mozilla’s CEO.

They will confirm that Google won these competitions on the merits, and that intense competition for browser defaults have improved browser performance and quality, resulting in higher search engine usage and revenues.”

Google Opening Statement

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No Meaningful Competition For The Contract

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Apple Lacks Alternatives



Eduardo Cue
SVP, Services



A. [C]ertainly **there wasn't a valid alternative**. . . .

* * *

A. The other existing GSEs were “**not a choice**” Apple could make.

* * *

A. I **don't believe there's a price** in the world that Microsoft could offer us.

* * *

A. [I]t **wasn't a choice** to pick any of the existing search engines. . . .

Tr. Testimony

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Bing Cannot Compete

 2016

Message

From: Ben Friedenson (Redacted@google.com)
Sent: 1/29/2016 5:30:40 PM
To: Daniel Alegre (Redacted@google.com)
CC: Joan Braddi (Redacted@google.com); Liz Daly (Redacted@google.com); Mike Roszak (Redacted@google.com); Cristina Bita (Redacted@google.com)

Google

Attorney Client
Privileged

NYC Scenarios

2016.01.15

Redacted - Privilege

CONFIDENTIAL

GOOG-DOJ-24081690

Ex. No.
UPX0674
1:20-cv-03010-APM

Notes

- Except Scenario A (most optimistic/least likely), it will not be possible for Alice to match our payments profitably

- In 2016, Google found that Bing would likely need to offer Apple a 122% revenue share rate to match Google's payments at a 33.75% revenue share.
- Google named this project "Alice in Wonderland" after a dream sequence—and used "Alice" as the codename for Bing.

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Apple Lacks Alternatives



Sundar Pichai
CEO



Q. So, armed with all of this information we've just been talking about, **at any point in your discussions in 2016 with Mr. Cook and Mr. Cue, did you communicate to them that they didn't really have any leverage in negotiating a revenue share percentage because Google was the only viable option?**

A. I looked at it with a -- with a set of factors.... Our search usage had grown tremendously, so the deal was working well for us. Users were very happy with their experience. It was a competitive dynamic. There was a lot of uncertainty about what Apple would do because Apple tends to, you know, design, control its own experience. . . . **And by the way, yes, I did take what you're saying into account, which was why we didn't pay the share Apple wanted.**

Tr. Testimony

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Mozilla Lacks Alternatives



Mitchell Baker
Executive Chairwoman



A. . . . Competition in [the] search market would help us . . . [b]ecause then there are **more options**.

* * *

A. . . . There **aren't many alternatives** [to Google].

Des. Testimony

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Competition For The Contract: Android

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Little Competition For Android



**Prof. Kevin
Murphy**

*Google Expert
Prof. of Economics,
Univ. of Chicago*

Q. And in describing the competition for on Android, **you intentionally do not use the word “intensely competed”**; right?

A. I don't think I had evidence for that.

That's why I didn't make a statement to the effect one way or the other whether it was intensely competed or not. . . .

Tr. Testimony

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Competition For Distribution Is Not Competition For Consumers

REDACTED FOR PUBLIC FILING



Distributors Are Self-Interested



**Prof. Kevin
Murphy**

*Google Expert
Prof. of Economics,
Univ. of Chicago*

Q. And maximizing profits can mean making decisions that are sometimes worse for Apple's users?

A. Well, I'm not -- yeah, **they're not always aligned**, but they have a strong incentive to please their users since that's where their bread is buttered, right.

* * *

Q. Raising e-Book price meant Apple would make more money itself at the expense of its customers?

A. I'd have to go back and go through all of it, but I presume Apple's conduct reflected their interests.

Tr. Testimony

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3

Google Failed To Prove Procompetitive Benefits Outweighing The Anticompetitive Effects

A. Competition For The Contract

B. Passthrough

Passthrough:
Does Competition For
Search Distribution Benefit
General Search Users?

REDACTED FOR PUBLIC FILING



Procompetitive Justifications Must Be Cognizable

To be cognizable, justifications:

1. **Must be in market:** Section 2's focus on protecting competition in "any" relevant market derives directly from its text, which prohibits monopolization of "any part of . . . trade or commerce." 15 U.S.C. § 2.
2. **Cannot be pretextual:** A cognizable justification must be "nonpretextual." *United States v. Microsoft Corp.*, 253 F.3d 34, 59 (2001); *Image Tech. Serv., Inc. v. Eastman Kodak Co.*, 903 F.2d 612, 618, 620 (9th Cir. 1990) (justification must be "genuine," not "pretextual").



Passthrough Not Considered

 2021

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, *et al.*,

Plaintiffs,

Case No. 1:20-cv-03010-APM

v.

HON. AMIT P. MEHTA

Google LLC,

Defendant.

State of Colorado, *et al.*,

Plaintiffs,

Case No. 1:20-cv-03715-APM

v.

HON. AMIT P. MEHTA

Google LLC,

Defendant.

**DEFENDANT'S FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
PLAINTIFFS' NOVEMBER 1, 2021 NOTICE OF DEPOSITION OF GOOGLE LLC**

Defendant Google LLC hereby supplements its responses and objections to Plaintiffs'

November 1, 2021 Notice of Rule 30(b)(6) Deposition of Google LLC ("Notice"), as follows.

Ex. No.
UPX6019
1:20-cv-03010-APM

USDOJ-GOOG-00187358

30(b)(6) Topic 4: “From 2005 to present, Google’s tracking of whether its search distribution partners pass on payments received by Google to consumers in any form”

30(b)(6) Written Response: Google has not “locate[d] any formal analysis, study, or survey previously conducted, commissioned or relied upon by Google regarding any impact or correlation of payments made by Google to manufacturers or wireless carriers on consumer prices for devices or wireless services in the United States.”

REDACTED FOR PUBLIC FILING



The Documents: Prof. Kevin Murphy



Kevin Murphy,
PhD

Google Expert
Prof. of Economics,
University of Chicago

Q. So you didn't look at Google's documents on this subject?

A. No. I'm an economist, I look at markets and how those markets work, and we learn from the marketplace itself. It's the standard approach in economics.

REDACTED FOR PUBLIC FILING

Passthrough: Android

REDACTED FOR PUBLIC FILING



Passthrough Not Tracked



**Jamie
Rosenberg**

*Part-Time Advisor;
Former VP Strategy;
Former VP Business &
Operations for Android
& Google Play*



Q. And you have no understanding how carriers use the search revenue payments that Google pays; correct?

A. With the exception of what's now in some of these go-to-market agreements, we don't require them to share with us how they're using the funds.

Q. And **you don't have any understanding as to how carriers or OEMs use the revenue share payments that Google pays them?**

A. **I don't.**

Tr. Testimony

REDACTED FOR PUBLIC FILING

Passthrough: Android Ecosystem

REDACTED FOR PUBLIC FILING



Passthrough Not Considered



Sundar Pichai
CEO



Q. So you think about Google search separate from the competition between Apple iOS and Android?

A. That's correct, yeah.

Tr. Testimony

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Passthrough Not Considered



Joan Braddi
VP, Product
Partnerships



Q. So it must be the case that **Google has determined that the benefits to Google Search are worth the cost of propping up Android's biggest rival**; is that right?

A. **I don't think we have ever looked at it that way.** We sell our search to many different competitors. It's an independent product.

Tr. Testimony

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Passthrough: **Android** **Low-Cost Phones** **Better Phones**

REDACTED FOR PUBLIC FILING



Low-Cost Phone Narrative Unsupported



**Prof. Kevin
Murphy**

*Google Expert
Prof. of Economics,
Univ. of Chicago*

Q. You haven't seen any documents that link the MADA bundle with the sale of low-cost phones; right?

A. I don't recall documents saying that. I know, though, Google viewed the MADA and the zero-priced license as an important part of the design decision of Android, of the Android model that they built.

Q. You haven't quantified how many, if any, low-priced Android devices would leave the U.S. market if the MADA bundle was disallowed in the U.S.?

A. I don't -- I don't know that, because we don't have empirical data to do that. As I've been saying throughout, my approach is always to try to use market evidence to say what I can say.

Q. You haven't seen any data from Europe or Russia that showed that low-end cell phone makers left the market after the MADA bundle was disallowed?

A. Well, I don't have evidence on that, no. I haven't seen the data.

Tr. Testimony

REDACTED FOR PUBLIC FILING



Low-Cost Phone Narrative Unsupported

 2017

From: Christian Cramer <[REDACTED]@google.com>
To: Ruth Porat <[REDACTED]@google.com>, Kristin Reinke <[REDACTED]@google.com>
Subject: Fwd: BC Deal Review: Agenda for Tuesday Sept 5th at 8:30 AM PST and Wednesday Sept 6th at 8:00 AM PST
Cc: Helen Tseo <[REDACTED]@google.com>, Steven Hahn <[REDACTED]@google.com>, Cristina Bita <[REDACTED]@google.com>, Benjamin Fiedenson <[REDACTED]@google.com>, Yuki Sugawara <[REDACTED]@google.com>, Alistair Connal <[REDACTED]@google.com>, Michael Roszak <[REDACTED]@google.com>

*** Attorney Client Privileged and Confidential ***

Hi Ruth and Kristin,
The Android team is bringing the renewal of the Samsung mobile search revenue share deal to BC tomorrow Wednesday (see document, supplemental deck). Please see below key terms and Finance perspective.

Context

I think you are largely familiar with the recent deal negotiations with Samsung, also from the "Samsung Search Agreement Status" update that you received from Jamie on July 20 (see also copy of the note below my signature for your reference). I will still put some context here, please disregard if too much.

The previous Samsung revenue share deal expired ~2 years ago in 2015, and we have been extending that deal month-to-month since then as we negotiated a new deal. A deal was approved by BC in November 2015 (deck here) with an initial proposal of gross revenue share on installed base, [REDACTED] on new devices, and an additional [REDACTED] on devices with carrier client IDs (and additional fallback options).

Since then, the deal team has been negotiating with Samsung with challenges in alignment first on the revenue share amount (Samsung felt that the options presented were not financially favorable enough), then on assistant and security updates, which are new considerations.

Samsung signed a new Mobile Application Distribution Agreement (MADA) earlier this year. MADA is a license for Android device manufacturers to pre-install some of Google's apps and APIs and ship those apps with their device. Samsung's MADA requires that:

- GSA app is preloaded
- The widget is preloaded on the Default Home Screen
- Google hotword ("Ok Google") is enabled to invoke Google Assistant
- Long press on home defaults to Google

Ex. No.

UPX0580

1:20-cv-03010-APM

Components of the Deal

Samsung gets:

- Ads Revenue share: [REDACTED] of gross revenues [REDACTED] of net revenue, after deducting [REDACTED] for expenses, aka [REDACTED] on both installed base and new devices. There will be a penalty of [REDACTED] reduction (dependent on Device Model) to revenue share if Samsung does not meet the security and letter requirements outlined below. Since Samsung currently is behind on their security updates, they have agreed to an initial revenue share of [REDACTED] of net, after deducting [REDACTED] for expenses) which means Samsung will initially get an [REDACTED] lower payout; the percentage will be increased to [REDACTED] of gross revenue upon written confirmation from Samsung that the security requirements have been met, followed by confirmation from our security team.
- Transaction Revenue share: once exceeding a [REDACTED] threshold (estimated in good faith), Google will pay partner [REDACTED] and parties will discuss in good faith whether Transaction Revenues shall be subject to revenue share and, if so, at what terms.
- The team plans to sign the contract before the end of September with an effective date of July 1, 2017.

In exchange for revenue share, Samsung has agreed to the following:

- Search:
 - Google as default search engine with exclusivity
 - Samsung browser and keyboard cannot be enabled with Bixby (without this, enabling may lead to siphoning off of search queries to other providers)
- Assistant:
 - 3rd party assistant protections, e.g. 3rd party hotword cannot be enabled out of the box
 - Include 2 screens in the Setup Wizard for Google Assistant
 - Google set as only search backfill provider for Bixby; non-Q&A / search queries may be backfilled by other providers (e.g. Expedia for travel questions)
- Security & Letter Updates:
 - For flagships (S and Note series), monthly updates for [REDACTED] years and quarterly in the [REDACTED] year
 - For high volume devices (A and J series excluding J1), quarterly updates for [REDACTED] years
- Other: Daydream will be supported in flagships, e.g. Note 8 and 9

Deal Economics

The deal term is [REDACTED] years. Over this time period, under the old deal, we would have paid [REDACTED] in revenue share. With the new proposed deal, we anticipate an incremental payments of [REDACTED] for a total of [REDACTED] in revenue share. Estimated search revenues for this time period through Samsung is [REDACTED]

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GOOG-DOJ-10707941

"Rationale in support of the proposal:

- Secures Google access on Samsung devices including:
 - Google as default search/exclusive search
 - Google Search backfill for Bixby
 - Security and letter upgrades
 - Daydream support on specific devices"



Prof. Kevin Murphy

Google Expert

Prof. of Economics, Univ. of Chicago

Q. There's nothing in here that says that -- well, nothing in here about pass-through; right?

A. No.

Q. Nothing in here about supporting low-priced phones throughout the world or throughout the United States?

A. No.

Tr. Testimony

REDACTED FOR PUBLIC FILING

Passthrough: **Android** **Consistent User Experience**

REDACTED FOR PUBLIC FILING



Consistency v. Innovation



Jamie

Rosenberg

*Part-Time Advisor;
Former VP Strategy;
Former VP Business &
Operations for Android
& Google Play*



- Q.** And Android partners compete against one another by differentiating their devices and device experiences?
- A.** That's one of the ways they compete, yes.
- Q.** And differentiation between Android devices can lead to innovation; correct?
- A.** Yes, I mean, innovation is one of the ways they can differentiate, like the foldable devices I showed or some of the other innovations we talked about earlier.

Tr. Testimony

REDACTED FOR PUBLIC FILING



Consistency Has Many Forms

A choice screen is a consistent user experience.



Prof. Michael Whinston

Plaintiff Expert, Prof. of Economics, M.I.T.

A. . . . [I]f it's really about consistency, like **another way to have consistency is to always have a choice screen**, that's very consistent. So it's not -- you know, **I don't see the link between exclusivity and consistency.**

Tr. Testimony

OEMs and carriers have their own incentives to ensure a good user experience.



Jeffrey Giard

VP, Strategic Partnerships & Business Development

A. . . . [I]f [consumers are] confused to the point where they need to call [Customer] Care, that is a real cost to T-Mobile as well as **if we're not providing an optimal experience and they're confused, they may switch devices**, . . . switch to an iOS device or even switch carriers[.]

Des. Testimony

REDACTED FOR PUBLIC FILING

Passthrough: **Android** **Align Incentives**

REDACTED FOR PUBLIC FILING

Passthrough: Apple

REDACTED FOR PUBLIC FILING



No Restrictions On ISA Payments



Eduardo Cue
SVP, Services



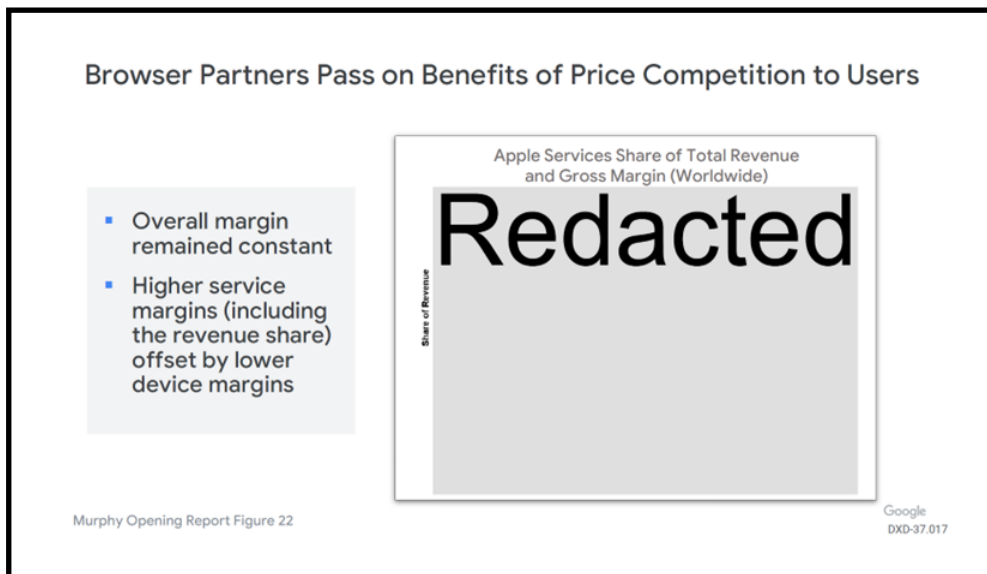
- Q. Does the ISA place any limitations on how Apple uses its split of the Google revenue share?
- A. No. I mean, the money comes to Apple, and we can do -- **the money is just Apple's to decide how to use it.**
- Q. Are those payments designated for any specific use within Apple?
- A. No, they're not.

Tr. Testimony

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Could Be A “Coincidence”



Apple's device margins have declined while its service revenues have increased.

Prof. Murphy:

- Stated this could be a “coincidence”
- Agreed other factors could have contributed to the decline
- Did not use econometric analysis to show causation—“I don't think I could”

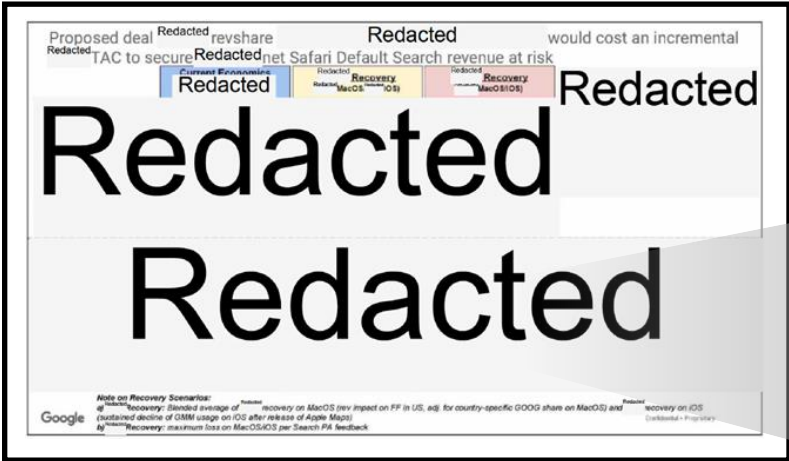
REDACTED FOR PUBLIC FILING



TAC Increases Yield Zero Marginal Searches



Ex. No.
UPX1050
1:20-cv-03010-APM



Variance: NYC Ask v. Current					
<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Total</u>
Redacted					

\$B
Safari Default Search Revenue
TAC – Safari Default
Redacted
Total TAC
Safari Default Net Revenue

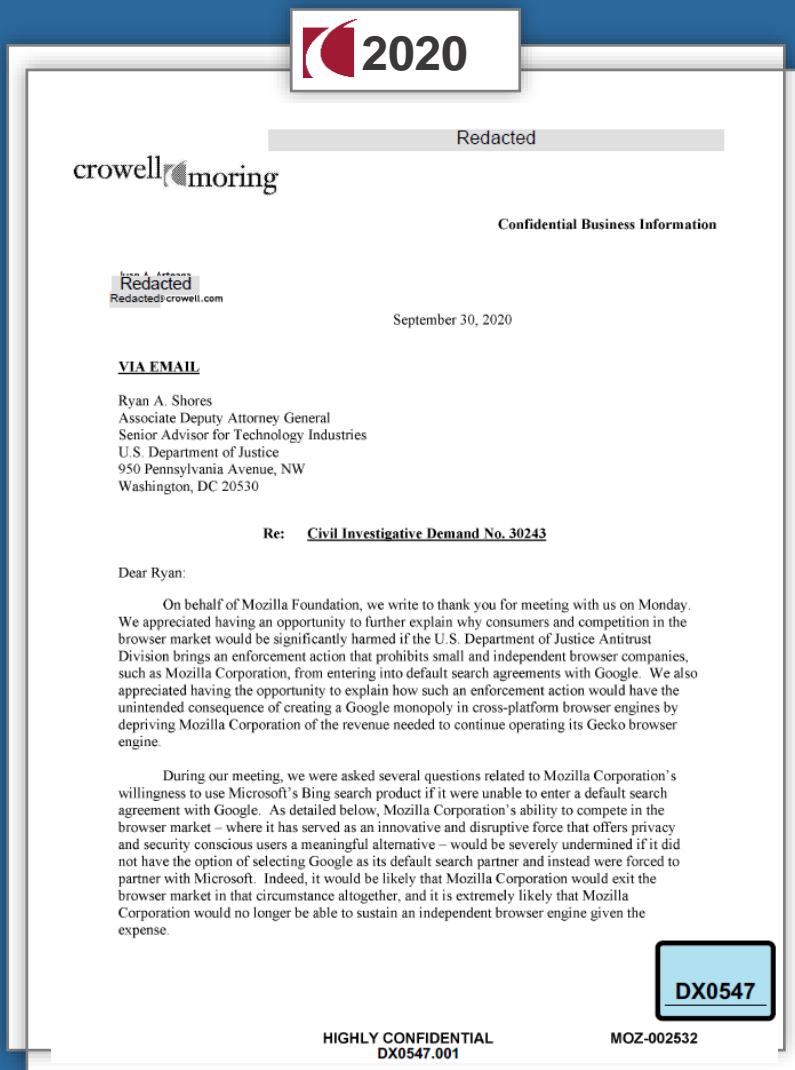
REDACTED FOR PUBLIC FILING

Passthrough: Mozilla


REDACTED FOR PUBLIC FILING



The “Mozilla” Letter



Written by outside counsel

crowell  moring

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Passthrough:
Revenue Share Payments
Would Be Higher
Without Restrictions

Less Restrictive Alternatives

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“Substantively, the burden would be on [the defendant] to demonstrate that benefits it claims resulted from its [conduct] ‘could not have been achieved absent the [conduct].’”

FTC v. Meta Platforms, Inc., 2023 WL 3092651, at *4 (D.D.C. Apr. 26, 2023)

“Option but not the obligation”

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Android LRA Already In Effect



**Adrienne
McCallister**

*VP, Global
Partnerships*



Q. . . . The go-to-market agreements did not require carriers to pre-install Google Search --

A. No, it did not.

Q. -- on devices? It also didn't require Google Search to be set as the default search engine on the Android devices that qualified?

A. The go-to-market deal did not, that was in the RSA agreement.

Q. Got it. And the go-to-market agreement did not require that the devices that qualified had Google Search exclusivity?

A. No.

* * *

Q. And again, I don't mean to belabor the point, but the purpose of supporting those marketing activities was to support the sale of Android devices, correct?

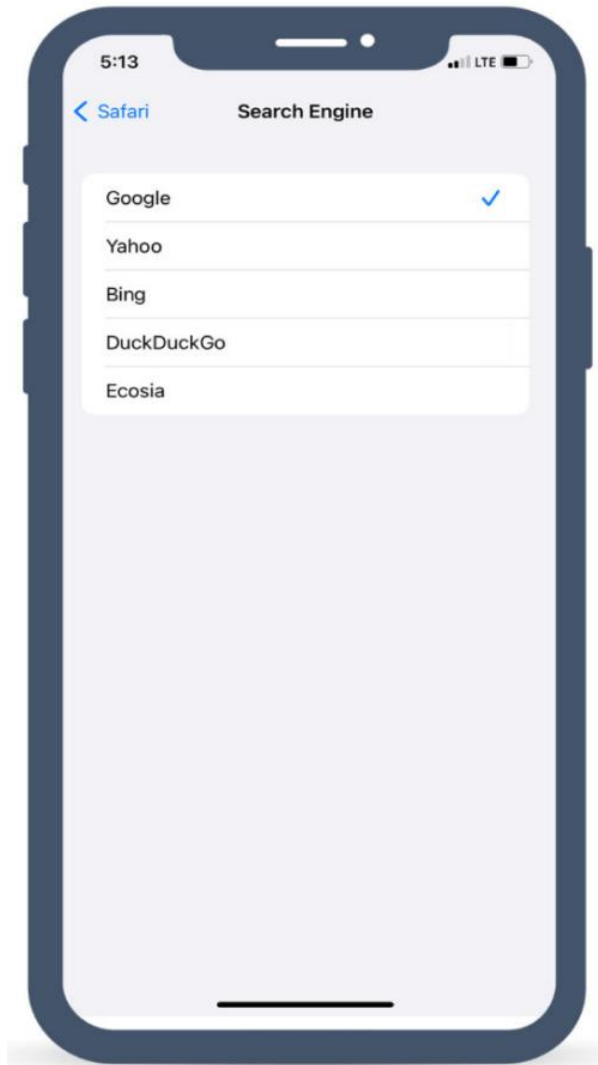
A. Sure, yes.

Tr. Testimony

REDACTED FOR PUBLIC FILING



GSEs Share Revenue Without A Default



- All other GSEs share revenue without demanding default exclusivity
 - Sometimes to be a user-selectable option
 - Sometimes distributor has “the right, but not the obligation” to include them as an option

REDACTED FOR PUBLIC FILING



Security Update Incentives Available



Sundar Pichai
CEO



Q. But Google could provide a separate financial incentive for security upgrades outside of the RSA, correct?

A. Sure, we could structure it that way.

Tr. Testimony

REDACTED FOR PUBLIC FILING

Choice Screens Are Efficient

REDACTED FOR PUBLIC FILING



Choice Screens Are Useful



Eduardo Cue

SVP, Services



Q. . . . [D]o Apple users make some choices to set up their phones right out of the box?

A. Oh, they do.

* * *

Q. And, Mr. Cue, I'm simply asking that when Apple thinks it's important, it does allow the user a choice, such as the choice screens that we see in UPXD009?

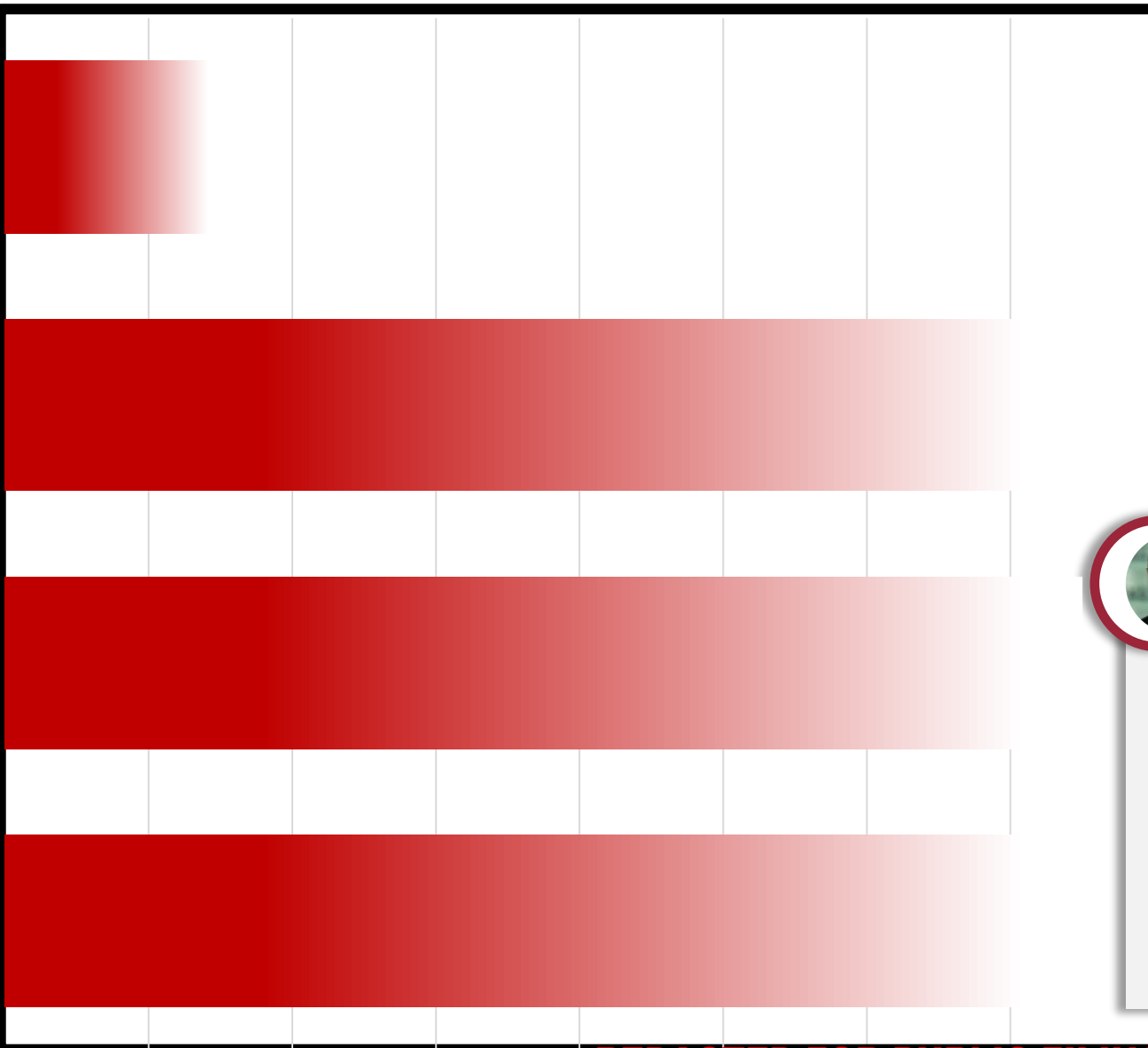
A. We certainly make decisions on when to show these options that you show here.

Tr. Testimony



Google v. The Space-Time Continuum

Choice
Screen
Selection



Downloading
App

Searching
Without GSE

Changing
Default



Dr. Mark Israel
Google Expert, Compass Lexecon

On searching without a GSE:
“I think **I say the switching costs to go to another site are minimal. . . .**”

Tr. Testimony

REDACTED FOR PUBLIC FILING

“[I]f the monopolist’s procompetitive justification stands unrebutted, then the plaintiff must demonstrate that the anticompetitive harm of the conduct outweighs the procompetitive benefit.”

United States v. Microsoft Corp., 253 F.3d 34, 59 (D.C. Cir. 2001)



United States & Co-Plaintiff States v. Google LLC

Plaintiffs' Closing Statement

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Appendix

REDACTED FOR PUBLIC FILING



Google v. Google

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, *et al.*,

Plaintiffs,

v.

Google LLC,

Defendant.

Case No. 1:20-cv-03010-APM

HON. AMIT P. MEHTA

State of Colorado, *et al.*,

Plaintiffs,

v.

Google LLC,

Defendant.

Case No. 1:20-cv-03715-APM

HON. AMIT P. MEHTA

DEFENDANT'S PROPOSED FINDINGS OF FACT

“Microsoft’s index had been too small for too long, as acknowledged by its senior search leadership.”

“That same year (2014),[] Microsoft personnel continued to express concerns that most features in Bing were designed with mobile search as an afterthought, resulting in a ‘sloppy’ search user experience.”

Def. Proposed Findings of Fact, ECF No. 910, ¶¶ 471, 482.

REDACTED FOR PUBLIC FILING



Payments Higher With Competition



**Prof. Michael
Whinston**

*Plaintiff Expert
Prof. of Economics &
Management, M.I.T.*

A. . . . [I]f rivals get stronger, actually that will tend to push revenue shares up. But a second thing is what I just talked about a moment ago, that **if competition for these things is not all or nothing, that also can push revenue shares up.**

Tr. Testimony

REDACTED FOR PUBLIC FILING



Choice Screens Functional

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, <i>et al.</i> , Plaintiffs, v. Google LLC, Defendant.	Case No. 1:20-cv-03010-APM HON. AMIT P. MEHTA [REDACTED]
State of Colorado, <i>et al.</i> , Plaintiffs, v. Google LLC, Defendant.	Case No. 1:20-cv-03715-APM HON. AMIT P. MEHTA [REDACTED]

DEFENDANT'S PROPOSED CONCLUSIONS OF LAW

“The browser agreements improve search quality and output by enabling the browser to work effectively out of the box”

Def. Proposed Conclusions of Law, ECF No. 909, ¶ 86.

REDACTED FOR PUBLIC FILING



Mozilla Benefits From Search Competition

Why not Google

Users	-
Mission Alignment	Does not promote competition for search Supports the continued dominance of google Dependency of Google
Financial Security	No revenue guarantee Need product and business focus to succeed Revenue share could drop below projections
Downside Risk	No opportunity to grow share Mozilla must change to focus on search volume/performance

Why YAHOO!

Users	Opportunity to innovate features and services that are customized for Firefox users
Mission Alignment	An agent for change Independence from Google Opportunity to level the playing field in search
Financial Security	High guarantee 5-year term Diversifies sustainability projects Projected growth of market share



2014

REDACTED FOR PUBLIC FILING

Ex. No.

UPX0315

1:20-cv-03010-APM



ISA Payments > Bing's Revenue

- In 2022, Google's ISA payment of \$20B to Apple was nearly double Bing's **total, worldwide revenue**

Microsoft Form 10-K

Ex. No.

UPX8094

1:20-cv-03010-APM

(In millions)

Year Ended June 30,	2022	2021	2020
Server products and cloud services	\$ 67,321	\$ 52,589	\$ 41,379
Office products and cloud services	44,862	39,872	35,316
Windows	24,761	22,488	21,510
Gaming	16,230	15,370	11,575
LinkedIn	13,816	10,289	8,077
Search and news advertising	11,591	9,267	8,524
Enterprise Services	7,407	6,943	6,409
Devices	6,991	6,791	6,457
Other	5,291	4,479	3,768
Total	\$ 198,270	\$ 168,088	\$ 143,015

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Competition For The Contract Does Not Prevent Competitive Harm



Prof. Michael Whinston
Plaintiffs Expert
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- A dominant firm and distributor can find it worthwhile to enter contracts that harm competition—**competition is a public good**
- When bidding for an exclusive contract, a dominant firm can use the **monopoly profits** it protects to make sure it wins
- When there is a dominant firm, competition for **exclusives** can make competition less intense

“[C]ompetition by a dominant supplier for exclusivity sometimes may result in harm to consumers.”

Benjamin Klein & Kevin M. Murphy, *How Exclusivity Is Used to Intensify Competition for Distribution—Reply to Zenger*, 77 Antitrust L.J. 691, 696 (2011)

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